

State of Colorado



Bill Ritter, Jr.
Governor

Rich Djokic
Board Chair

Kristin F. Rozansky
Board Director

State Personnel Board
633 17th Street, Suite 1320
Denver, Colorado 80202-3604
Phone (303) 866-3300
Fax (303) 866-5038

Meeting Minutes April 15, 2008

The State Personnel Board met in public session on Tuesday, April 15, 2008, at Colorado State University, Room 210, Lory Student Center, Fort Collins, Colorado 80523.

The meeting was called to order at 9:11 a.m. Board members Rich Djokic and Dana Shea-Reid were present in person. Board member John Zakhem was present via teleconferencing. Board members Roberto Corrada and Robert Thompson were absent.

Kristin F. Rozansky, Board Director, and Assistant Attorney General Roxane Baca, Board Counsel, were present in person. Jane Sprague, General Professional III, was present via teleconferencing in the Board office in Denver.

I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

Mr. Gonzales reported to the Board on several topics of interest to state employees. (1) Total compensation survived the Long Bill without many amendments being made to it. The average employee can expect a 3.8% pay raise, including a 1% base-building raise and, if an exceptional rating is received, a 2% raise in achievement pay. Giving kudos to legislators, in particular Senator Johnson and Representative Buescher, who realize the benefit of cost-sharing health insurance costs between employees and the state, Mr. Gonzales stated that the state's contribution to benefits had risen to 90% of market value, rates in the self-funded plan have been raised, the medical plan INO-30 has been eliminated to lessen the burden on the self-funded plan, and the average increase in paychecks will be about \$160.00 per month. (2) Summer town hall meetings are being planned, including one scheduled for June 13, 2008, in Grand Junction, at Mesa State College; a retreat and town hall meeting are also scheduled for Durango during that same week, and area representatives and senators are invited to attend. (3) The Higher Education exemption report is in the works, revealing findings and remedies in this area. (4) A "6-10 Guidance" is

being developed due to concerns about how Board Rule 6-10 meetings are being conducted and what information from that meeting, including audiotapes, employees have a right to obtain. (5) The new personal leave policy is on hold for calendar year 2008; the plan has been modified four times, but needs more departments to provide information with regard to its impact on budget and technology. The plan itself will involve no additional funding, no general fund dollars, and the news reports are inaccurate as to fiscal impact on the state. DPA has been publishing a clarification document entitled "Setting the Record Straight" on this policy. (6) An Affirmative Action Plan is in the works, in keeping with the statute. (7) With regard to the proposition of developing training for supervisors, the plan articulating DPA's vision, including retention, promotion, and planning, is being implemented, and DPA is hiring a new Director of Government and Public Relations who will help to stress the importance of public service.

David Kaye addressed the Board, reporting on: (1) Amendment 41 – there is a series of questions from the General Assembly that have been filed with the Independent Ethics Commission; (2) Performance Management – input on this topic is being sought at townhall meetings; and (3) Benefits – INO-30 is being eliminated. Healthline is being released soon with the new rates and plans, and Open Enrollment meetings are ongoing, with the actual dates of enrollment beginning April 21 and ending May 16. Mr. Kaye and Mr. Gonzales strongly urged employees not to wait until the last day to enroll, especially employees with children.

At the end of DPA's presentation, Mr. Djokic thanked Mr. Gonzales and DPA for coming up to the Board meeting to give their report and for holding a townhall meeting in conjunction with this Board meeting in Fort Collins.

II. REQUESTS FOR RESIDENCY WAIVERS

Director Rozansky reported that there is one new residency waiver request pending this month, which is a renewal of a Department of Corrections waiver for the positions of Physician II and Mid-Level Providers.

III. PENDING MATTERS

There were no Pending Matters before the Board this month.

IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

- A. John Conte v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2008G004.

Mr. Zakhem moved to grant Respondent's Motion to Strike Complainant's

claim of discrimination based on creed and both exhibits he attached to his reply brief because these issues were raised for the first time and were not part of the record. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic.

In a second motion, Mr. Zakhem moved to adopt the Amended Dismissal Order. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic.

V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

- A. Pervaiz K. Sulehria v. Department of Corrections, Division of Adult Parole, Community Corrections and Youthful Offender System, State Personnel Board case number 2007G095.

Following consideration of the fourth prong of a *prima facie* case of discrimination and concluding that the circumstances did not give rise to an inference of unlawful discrimination, Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic

- B. Donald Wayne v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2008G055.

Ms. Shea-Reid moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic

- C. De'Edra Dangerfield v. Department of Labor & Employment, Department of Quarterly Census Employment Wages, State Personnel Board case number 2007S002.

Ms. Shea-Reid moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic

- D. Bobby Espinoza v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2008G009(C).

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic.

VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. David Bushrow v. Department of Transportation, State Personnel Board case number 2008B038.
- B. Christopher Olson v. Department of Local Affairs, State Personnel Board case number 2008B013.

The Board did not vote to review any Initial Decisions *sua sponte*.

VII. REVIEW OF THE MINUTES FROM THE MARCH 18, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the March 18, 2008 meeting as submitted. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic.

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MARCH 18, 2008 PUBLIC MEETING:

- A. John Johnson v. Department of Human Services, State Personnel Board case number 2007G054.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

- B. Nicole Carter-Maddox v. Department of Health Care Policy & Financing, State Personnel Board case number 2008G044.

The Board voted to reverse the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES (DHR), DPA

See REPORT OF RICH GONZALES, SECTION I.

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Mandate - Order of Dismissal in MacDonald v. Department of Transportation, State Personnel Board case number 2007B030, Court of Appeals No. 07CA1964

B. OTHER BOARD BUSINESS

- Staff Activities

Director Rozansky reported that the Colorado Bar Association has requested that Board staff again edit the chapter in the Employment Law Manual on practice before the State Personnel Board. The Director also stated that she will be addressing the Ethics Commission on Friday, April 18, 2008, at 12:00 p.m. on the use of Administrative Law Judges by Type I agencies. Finally, Ms. Rozansky stated that Board staff is going through the employee performance evaluation process.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

Scott Horak addressed the Board, recommending that Board members read an article in Reader's Digest regarding chemicals in your everyday life.

Brigitte Schmidt, President of Staff Council, addressed the Board, stating that Higher Education employees have concerns about exemptions from the personnel system, the uniqueness of their positions because of the Executive Order on Partnership Agreements, and, finally, health care management costs.

Anna Rohrbacker addressed the Board, stating that she is concerned because under the proposed personal leave policy, new employees would lose leave.

Mr. Gonzales thanked the Board for holding its meeting in conjunction with DPA's Townhall Meeting and announced that the Townhall Meeting would start at 11:00 a.m. in the Plant Science Building.

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

Director Rozansky reported that the bill prohibiting strikes by state employees has been signed into law.

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the April 15, 2008 Executive Session
- C. Other Business

* * * * *

APPROVED THIS 20th DAY OF MAY, 2008.

Rich Djokic, Board Chair

Dana Shea-Reid, Member

John Zakhem, Member